

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN**

KATHRYN KNOWLTON, DANA McCORMICK, TRACY COLE, TALEAVIA COLE, TAHUDAH COLE, TRISTIANA WALLS, ANDREW AARON, KAMILA AHMED, ROBERT AGNEW, ISIAH BALDWIN, JACQUELINE BOGENBERGER, RAINE CICH, STEVEN CONKLIN, RACHEL DULAY, ANNE DELESSIO-PARSON, ERIK FANNING, JILL FERGUSON, BREON FOSTER, JOANNA GEISER, JOSEPH HAYES, PERCY HAYES, DESTINEY JONES, SEAN KAHER, JOEY KOEPP, SONORA LARSON, HOLLY LAVORA, LAZARITO MATHEU, MOLLY NILSSEN, CARMEN PALMER, (JUVENILE) PALMER, (JUVENILE) PALMER, LEAH PORTER, AIDALI RIVERA, WILLIAM RIVERA, HECTOR RODRIGUEZ, JOSE HERNANDEZ RAMIREZ, OSCAR CONCEPCION RODRIGUEZ, ROSALIND ROGERS, NATHAN SABEL, WILLIAM SCHROEDER, MARIAH SMITH, PETER SPARKS, ANGEL VEGA, CHRISTINA VITOLO-HADDAD, GABRIELLA VITUCCI, SUZANNE WELLS, BRANDON WILBORN, KATELYN WOJNAR, SONJA WORTHY, KHALIL COLEMAN, and MEMBERS OF THE PEOPLE'S REVOLUTION AN UNINCORPORATED ENTITY hereinafter referred to as (TPR), on behalf of themselves and all others similarly situated,

Plaintiffs.

v.

Case No. 20 CV 01660

CITY OF WAUWATOSA
CITY OF WAUWATOSA CHIEF OF POLICE BARRY WEBER In his individual capacity
DENNIS McBRIDE, in his individual capacity.
AND JOHN DOES OFFICERS in their individual capacities,
Defendants.

MOTION TO COMPEL DISCOVERY RESPONSES

Pursuant to Fed. R. Civ. P. 37(a)(3)(B)(iii)-(iv) and Civ. L.R. 37, Plaintiffs respectfully moves this court to compel Defendants City of Wauwatosa, Dennis McBride, Barry Weber ("Defendants") to disclose, in response to Plaintiffs' First Request for Production of Documents properly served on Defendants on January 5, 2021, the following. To date, Plaintiffs have only sent one request for production of documents with seven requests. At issue to the present motion, are Plaintiffs' Requests Nos. 1, 2, 5, and 7. In

support of this motion, Plaintiff states the following:

1. On January 5, 2021, Plaintiffs served their First Request for Production of Documents on Defendants through counsel.
2. The disputed Requests for Production, with Defendants' responses and objections, as well as Plaintiffs' written responses to those responses and objections, are reproduced, in relevant part, and attached to this motion as Exhibit A.
3. As to Request numbers 1 and 2, Defendants acknowledge the existence of documents to satisfy this request but have failed to produce all documents. Pursuant to Fed. R. Civ. P. 37(a)(4)(a) "an evasive or incomplete disclosure, answer, or response must be treated as a failure to disclose."
4. As late as June 21, 2021, Defendant Counsel states, "There are additional emails that may be responsive to this request that hit for the search terms listed in No. 2. However, all emails that came to or from the Mayor have been produced as well as all the Mayor's text messages and written notes about any communications about planning." See Exhibit B, email of June 21, 2021 at 9:02am, from Attorney Jasmyne Baynard.
5. Defendant's Counsel continues to delay and cannot certify production to a request at the same time qualifying the completeness of the production. Additionally, Defendant Counsel improperly defers to Defendants' own (non-legal) staff, contravening Rule 26 standards, allowing the party (not Counsel) to evaluate and then certifying discovery requests. Defendants' Counsel Baynard states, "[a]s explained in my June 4 email, the City has reviewed and provided to you all emails that came to or from the Mayor's email. The PD is still doing a review of all emails that came to or from the PD

which hit for any of these search terms. I was told his review will not be completed until July at the earliest because they don't have the staff to review and make redactions if necessary." See Exhibit B, email of June 21, 2021 at 9:02am, from Attorney Jasmyne Baynard. This is a Rule 26(g)(3) violation and sanctions with costs are mandatory.

6. With regards to Plaintiff's request No. 5, Defendants are refusing to produce any drone videos to Plaintiff's in connection to the curfew imposed from October 7 – October 12, 2020.

7. Defendants have given no legal basis to the Plaintiffs or to the court as to why they are refusing to provide the videos directly to the Plaintiffs to date but acknowledge that such drone videos exist.

8. On June 21, 2021 Defendants' Attorney Baynard wrote to Plaintiffs' Counsel that with regards to Request No. 7, "...you have everything that is responsive to the Mayors depo. All communications." See Exhibit B.

9. On June 9, 2021 Plaintiff's received over 2300 pdf pages of documents from Defendants on a hard drive that Plaintiffs were requested to provide to Defendants before production would be effectuated. This included Mr. McBride's email from his City email of dmcbride@wauwatosa.net in pdf format only. None of the referenced attachments, nor metadata (emails in their original form) were provided.

10. On June 22, 2021, one day prior to the deposition of Dennis McBride, which had been properly scheduled and noticed cooperatively between Counsel since May 20, 2021, Defendants provided another "batch" of emails in excess of 400 messages.

11. On June 23, 2021 Defendant Mayor Dennis McBride was deposed.

McBride acknowledged that he had received some communications regarding city

business to his personal email of mcbarry1953@gmail.com and that he had not provided all of those emails to his Counsel which may be responsive to Request No. 7.

12. In addition, Defendant Dennis McBride has another email address of mayor@wauwatosa.net to which Plaintiffs have not been provided emails from this address which may be responsive to Request No. 7.

13. Also in the deposition Mr. McBride stated that he went through the emails himself and did not provide the meta data of emails, nor responses to some emails, and also did not provide any attachments to/from the emails, which would be responsive to Plaintiffs' request No. 7.

14. Defendant Barry Weber was deposed on April 23, 2021, a full 108 days after Plaintiffs' Requests for Production were properly served. It was only upon receipt of emails and confirmation in testimony of Mr. McBride on June 23, 2021 (138 days after production was due) that confirmed production had been incomplete. See Exhibit C – 10/11/20 email sent to Chief Weber from Mr. McBride regarding Christine Groppi.

15. Exhibit C is an email that was a responsive document that should have been produced timely through Plaintiffs' original January 5, 2021 request, as well as through the Notice of Deposition for Defendant Barry Weber.

16. In response to Request No. 7, Defendants have not produced any emails from Defendant City of Wauwatosa employees, Defendant Weber's email accounts, emails from members of Wauwatosa's Common Council, as well as all emails from all the members of the Wauwatosa Police and Fire Commission Members, in addition to any and all documents, electronic communications audio or written (emails), text messages between August 25, 2020 to December 15, 2020.

17. On June 23, 2021, City of Wauwatosa Civilian Crime Analyst Dominick Ratkowski was deposed and testified to providing to Defendant Weber and the WPD “Command Staff.” See Exhibit D Emails from Dominick Ratkowski to Chief Weber and other WPD Officers.

18. Also, on June 23, 2021, City of Wauwatosa Civilian Crime Analyst Dominick Ratkowski was deposed and testified to providing Plaintiff’s with a flash drive of documents on June 22, 2021 just one day prior to his deposition. Included on that flash drive was a protestor list that he created on or around June 5, 2020 and that he routinely emailed to Defendant Weber and the WPD “Command Staff” in general. Please see Exhibit E – Wauwatosa Police Department Protestor List received June 22, 2021 – redacted.

19. Also in his testimony, Mr. Ratkowski testified that this protestor list was updated hundreds of times from June 5, 2020 to five months before his deposition testimony given on June 23, 2021.

20. Until June 22, 2021 when Plaintiff’s received the flash drive prepared by Mr. Ratkowski, Plaintiffs did not have the protestor list, attachments, nor any emails from Defendant Barry Weber’s email given to use through our request for production of documents.

21. In his deposition, Mr. Ratkowski testified and agreed that before June 21, 2021, he had not been asked to produce and/or provide anything, that “he had not been asked to provide any information to (his) Counsel,” before June 21, 2021. Please see Exhibit F page 42 of Dominick Ratkowski’s Deposition of June 23, 2021.

22. Plaintiffs’ Counsel have in good faith conferred with Defendants’ Counsel in an

effort to obtain the requested information without court action, but the parties have been unable to reach an agreement on discoverable information with regards to the drone videos and Defendants have repeatedly failed to turn over documents in a timely fashion and in many instances have intentionally failed to turn over documents which have been discovered to exist often through deposition testimony.

23. Parties have participated in two Rule 16 scheduling conferences with the Court on January 6, 2021 and May 7, 2021. During the May 7, 2021 and the January 6, 2021 conferences, the Court instructed the parties that if there are any discovery issues or any other problems that cannot be worked out that they can brought before the court.

Based on the foregoing Plaintiff respectfully requests that the Court grant this motion to compel discovery no later than July 15, 2021 and also to move this court to enter an order of all costs, paid immediately, and sanctions against Defendants for violation of Rule 26(g)(3).

Dated this 7th day of July 2021.

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